

EXHIBIT 23

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FILED

2009 JUL 28 AM 1:55

Sherry W. Parker, Clerk
Clark County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

vs.

CLYDE RAY SPENCER,

Defendant.

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) Clark County No. 85-1-00007-2
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ORDER DENYING MOTION
FOR RECONSIDERATION

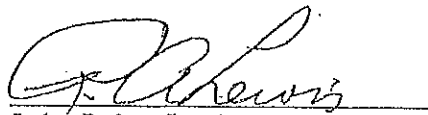
THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court, on the State's motion for reconsideration pursuant to CR 59 requesting the trial court to make a finding of credibility as to witness recantations as required by case law and the order transferring petition for a reference hearing. The Motion for Reconsideration was filed July 24, 2009. The motion was considered without oral argument, pursuant to Local Rule CR 59.

The Court of Appeals' original order directing a reference hearing in this case contained the following operative language: "The Superior Court is directed to issue findings of fact as to whether these witnesses testify consistent with their sworn affidavits provided by Spencer in support of his personal restraint petition". In an Order Clarifying

Reference Hearing Order, dated April 29, 2009, the Court of Appeals stressed that the reference hearing was for a "limited purpose". While indicating that the State may not call additional witnesses, the Court of Appeals stated "The issue at the reference hearing is whether KS and MS testify under oath consistently with their sworn statements before us. Our order does not request additional fact finding on other issues." The State's motion for reconsideration asks this court to ignore this clear language, and to search the original reference order for reasons to expand the hearing to include other issues. The Court declines the State's request.

Now, therefore, it is hereby ORDERED, ADJUDGED and DECREED that the State's Motion for Reconsideration, filed July 24, 2009, is denied

DATED this 28th day of July, 2009.


Judge Robert Lewis